

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by
GREENSTONE ENTERTAINMENT GP LIMITED
pursuant to s.137 of the Act for a special licence to sell and supply alcohol for consumption to people attending an event known as the Gibbston Valley Winery Summer Concert to be held at Gibbston Valley Station, Gibbston Valley, Queenstown.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr L A Cocks
Mr J M Mann

HEARING at Queenstown on 30 November 2016

APPEARANCES:

Mr D M Calvert – representing the Applicant
Sergeant T D Haggart – NZ Police – in opposition
Dr D W Bell – Medical Officer of Health – in opposition
Mr N P Bates with Ms S H Swinney – Licensing Inspectors – to assist

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the Committee is an application by Greenstone Entertainment GP Limited (the company) pursuant to s137 of the Act for a special licence to sell and supply alcohol for consumption to people attending an annual large scale event known as "The Gibbston Valley Winery Summer Concert" to be held at Gibbston Valley Station, Gibbston Valley, Queenstown on Saturday 21st January 2017 (with a contingency date of Sunday 22nd January 2017).

[2] The event is a concert featuring three international bands who were popular in the 70's and 80's. The concert is an annual daytime show with activity from 10.00am finishing at 6.30pm. It has been operating since 2011 and is going into its seventh year. The concert will also be held at the Taupo Amphitheatre on 28th January and the Whitianga Waterways on 29th January 2017. It attracts up to 16,000 people per year in Queenstown. The company's records indicate a demographic of male and female equally averaging an age of about 50.

[3] Up until now the reporting agencies and the applicant have reached broad agreement on the way alcohol is sold and consumed at the concert. Initially, when the event began in 2010, the agreed serve size was six cans of beer and two bottles of wine per transaction. Following that event it was agreed at the debrief meeting that the serve size be reduced to one bottle of wine rather than two. A single transaction of one bottle of wine and four cans of beer or cider has been the approved serve size ever since.

[4] When the 2014 concert was held, the number of serves remained the same but at 3.30pm, the number of drinks per transaction was reduced to four, and from that time drinks were served by wet pours only. It was following that event that the company introduced its own form of one-way door policy so that people who wish to return to their vehicles are accompanied by security.

[5] When the 2015 concert was being discussed with the Medical Officer of Health, the Police, and the Licensing Inspector, they all agreed to a serve size of four cans of beer and a bottle of wine. However, that year the organisers had agreed to try out a 375ml bottle of wine. It was agreed that the wine would be sold by wet pours from 5.00pm. During the discussion on the 2016 concert, there was opposition to the return to a 750ml bottle of wine. In a minute dated 22nd October 2015, the Committee granted the application 'on the papers'. We included our reasons as follows:

“The committee's reasoning to allow the sale of 750ml bottles was (a) that the applicant only had a limited supply of 375ml bottles at any event, (b) 750 ml bottles had been sold at four of the past five events without serious safety issues being raised and (c) there was a condition in the special licence requiring the duty manager to meet with the Police and/or Inspector every hour and the applicant was required to follow every directive issued in respect of control over the sale and supply of alcohol and (d) given the considerable number of people attending the annual event over five years, there was no evidence of an excessive or concerning number of reported incidents”

[6] The history of this particular event is important given that the Police and Medical Officer of Health have hitherto adopted a co-operative attitude to what has become to be recognised as a successful annual event. The de-brief meeting for the 2016 concert was held on 19th May 2016. This is the meeting at which one might expect any agency concerns to be raised. The Police summary of the meeting noted that of 15,000 plus attendees, there were minimal issues including two arrests for fighting (warnings given), two sent to detox, one EBA over 400 mg, and two charges for driving over 250mg (infringement offences). The Police also noted that although the sale of 750ml bottles was not ideal there were no real issues noted from this. The Security firm reported as follows: “Overall everything went well. Crowd behaviour was good. Intoxication was low. Entry went very well. Searching was good. Police were easy to work with.”

[7] This year there has been a significant change in the way the Police and Medical Officer of Health have approached the management of the event. No sound or satisfactory explanation was given for this change of attitude, but both agencies seem focused on the number of standard drinks per serve (just under 12). There was also concern with the proposed trading hours. The company sought to trade between 10.00am and 5.30pm (an hour longer than previously). However, after the Police and the Medical Officer of Health objected to this proposal, the company agreed to open at 10.30am and close at 5.00pm (the same period of time as previous years). The

remaining points of contention relate to (a) the size of the serve and (b) the company's intention to sell beer and wine unopened until 2.30pm. Because of the change of emphasis by the Police and Medical Officer of Health, the application was set down for a public hearing.

The Application.

[8] Mr Calvert stated that not once in its six years of operation in three different parts of the country, has the company breached its licence conditions or served a minor or an intoxicated person. In fact in the debriefing sessions, the company has been commended for its professional operation, and there have been few recommendations for improvement. Mr Calvert impressed with his knowledge and understanding of the event. He stated that in 2016, 6046 bottles of wine were sold along with 35,964 cans of beer (including low alcohol beer) or cider. The crowd was in excess of 15,000 so that average consumption equates to 303 mls of wine per person and 2.4 cans of beer/cider over six hours. He argued that these figures supported other evidence that the serve size was not encouraging excessive consumption of alcohol.

[9] He contended that unlike other large scale events, the company manages and operates all the bars and employs staff and managers. It also directly engages the medical team and selects its preferred security company. Mr D M Calvert is the company's concert site manager. He submitted that by engaging these services directly, the company has complete control as well as first-hand knowledge of any and all issues and the ability to change things when and where necessary. He also submitted that each year the company relies on the gathered evidence and real information in order to define the company's management plans and overall operation.

[10] In particular Mr Calvert contended that for six years the company has sold unopened beer or cider at the start of the day, and they have observed the alcohol being put into chilly bins so that no-one is forced to start drinking immediately. He argued that at the start of the day, stock piling is never an issue although he accepted that drinks should be opened from 2.30pm to avoid stock piling during the closing four hours of the concert.

[11] In answer to the claim that the sale of a bottle of wine and four cans of beer or cider, may lead to excessive or inappropriate consumption, or that it was unsafe and irresponsible, Mr Calvert pointed to the lack of any significant problems referred to by the Police or other agencies at the debriefing meetings. He suggested that such a claim was based on the belief that the person making the purchase could consume all the alcohol. He submitted that most people attend the concert in groups, and pointed to the Ticketek statistics showing that on average each transaction was for 4-6 tickets.

[12] Finally, Mr Calvert spoke glowingly of the publication "Guidelines for Managing Alcohol at Large Events" produced by NZ Police and the Health Promotion Agency. He stated that over the years, the company had implemented many of the recommendations which had become part of their 'Event Management and Alcohol Management plans'. He referred in particular to Paragraph 19 on page 22 "Post event evaluation". The de-brief should identify any outstanding issues for resolution, and seek feedback for future events and prepare recommendations for future events. "A post-event review and evaluation will enable informed decisions on embracing, adapting or discarding strategies and actions". Mr Calvert gently reminded the agencies, that attendance and discussion at such a meeting was a better way to

resolve issues as recommended by the “Guidelines”, rather than waiting for the application to be filed and lodging objections.

The Medical Officer of Health.

[13] Dr Bell has been the Medical Officer of Health for the Otago and Southland districts since 1988. He argued that a single transaction as proposed by the company would be up to 12 standard drinks. He produced the document “Guidelines for Managing Alcohol and Large Events.” and in particular item 11 on page 17

“Controlling the maximum number of drinks that can be purchased at one time by unit volume is a key alcohol-control tool and should be limited to two standard drinks (or fewer) per person per purchase.”

[14] Dr Bell then argued that should we permit the number of drinks per transaction that had been requested we would be setting a precedent, and might also create inconsistency with other Committees throughout the country. He also argued that it is customary for drinks to be opened at concerts. He gave his opinion that the combination of a large serve size and unopened drinks at an event lasting six hours with a festival atmosphere would encourage excessive consumption of alcohol.

NZ Police.

[15] Sergeant T D Haggart opposed the number of drinks that can be purchased in the one transaction equating to just under 12 standard drinks. She argued that previous decisions had been confusing as to whether a person could purchase a bottle of wine and four cans of beer or cider or a bottle of wine or four cans. Like Dr Bell she suggested that one person could drink this amount. She also argued that the reason for small serves would be to ensure that people will have to go up to the bar more often and they can be observed and assessed.

[16] The Sergeant also used the above argument to oppose the cans of beer or cider being unopened, saying that once again the concert goers would have to go to the bar more frequently where their state of sobriety can be observed. She produced an e mail report dated 28th January 2016 from Sergeant Derek Eaton who attended the 2016 concert as the Alcohol Harm Reduction Officer. In his report the Sergeant stated that observing the crowd leaving the concert it was clear that assessing the level of intoxication is easier when people are up and walking than sitting down and socialising. Sergeant Haggart used that part of his report to support her argument. The report also contained the following:

“The conditions of the licence were met by the organisers, Dean and Amanda, who also conducted a walk through with us during the concert.”

[17] The Sergeant had gone to a great deal of trouble producing details of all alcohol related incidents that had occurred at the concert since 2013. It seemed to us slightly unfair to be presented with details of incidents that happened years ago, which had never been the subject of specific concerns or warnings at the time. Nevertheless in general terms it is noted that over the years there has been approximately one alcohol related incident for every ten thousand people who have attended.

The Licensing Inspector.

[18] The Licensing Inspector was as usual, helpful and objective. Mr N P Bates noted that the company's suitability was not in question for the proposed event. He suggested that the issue is whether the application in all its detail meets the Act's objects. He noted that at the de-brief for the 2016 concert, no concern was raised by any of the parties in relation to the size of the serves. He suggested that the serving of unopened cans was subjective and noted the difference of opinion within NZ Police in that the Police in Taupo supported the proposal to serve unopened cans until 4.00pm. He submitted that unlike previous years, there would now be an hour and a half (rather than an hour) when the concert would be ending during which time no alcohol would be sold or served.

[19] This year the company is introducing an "Express Pass" for a limit of 3000 people. They will be able to enter the venue from 10.00am rather than 11.00am. Mr Bates pointed out that the holders of the express pass will be able to access the bars from 10.30am whereas the vast majority of the concert goers will effectively have half an hour's less ability to drink than previous years.

The Committee's Decision and Reasons.

[20] There are 12 criteria set out in s.142 of the Act to which the committee must have regard when considering the application. There is no need for us to outline these criteria because the company ticks all the boxes. It has an excellent Alcohol Management Plan which has evolved over the years as experience and knowledge has been gained. In addition the Act provides for additional requirements for large scale events (S.143), and once again the company is compliant. We think that Mr Bates is right when he suggested that the issue is whether the objects of the Act as set out in s.4 will be compromised if the event proceeds as planned.

[21] We start from the principle that it is legal to sell alcohol under licence, and it is legal to consume it. The object of the Act is that the sale and consumption of alcohol shall be undertaken safely and responsibly. Where is there evidence of any lack of safety or irresponsibility? "Res ipsa loquitur". The second object is that the harm caused by excessive or inappropriate consumption of alcohol should be minimised. The steps taken by the company are contained in the Alcohol Management Plan and once again we are indebted to Mr Calvert who pointed out section 7 on page 12 of the 'Guidelines'.

"Despite the best measures, people can still become intoxicated and need help. It is important to provide safe areas where they can be cared for by trained and experienced professionals."

[22] Dr Bell opined that if the serve sizes remain the same, and cans are not opened when selling starts at 10.30am, then excessive consumption is encouraged. But there is no evidence to support his opinion. Indeed all the evidence points in the opposite direction. It is a fair point to compare the situation to an 18 year old who is legally able to purchase five bottles of spirits from an off-licence which are going to be consumed in an unsupervised environment.

[23] We think that the decision not to open the cans initially is a good one, and encourages people only to drink when they want to, rather than when they have to. It is a tried and true method that has worked for six years. The company takes the view that as the day progresses there will be a greater potential to stockpile drinks

nearer to the anticipated closing of the bar, hence the decision to go to wet pours.

[24] There are a number of aspects to this concert that sets it apart from other events. It starts in the morning and finishes in daylight. The average age of the concert goers is in the 50's. It has been successfully and professionally run for six years without reported concerns. People attend the concert in groups. They are used to purchasing wine and beer or cider and placing the items in their chillers to enjoy as the day progresses. It is held in countryside surroundings and is special to the Gibbston Valley. It is a model of its kind on how to behave and enjoy a concert.

[25] One of the relevant paragraphs in the "Guidelines for Managing Alcohol at Large Events" was referred to by Mr Calvert. It is on page 2 under Aims and Objectives and reads as follows:

"The guidelines (including the Standard Guidelines on page 12) are not intended to be prescriptive – they simply provide useful advice, guidance and recommendations for people planning alcohol management at large events.

The guidelines also assist regulators in a similar way, but are not intended to prevent decisions on an event case-by-case basis."

[26] It is incorrect if not unreasonable (a) to compare this event with "Rhythm and Alps" or the "Rugby World Cup" as was done by the Medical Officer of Health and the Police respectively, or (b) to suggest that a precedent will be set if the application is granted in its present form. This is a 'soft' event where there are little or no overt signs of intoxication. It is well managed by a company which is always on the lookout for ways of improving its systems. The company is entitled to ask whether anything happened at the last concert which might have persuaded the Medical Officer of Health and the Police to oppose the application.

[27] One of the features of the new Act is the establishment of territorial committees who are deemed to have sufficient knowledge of local conditions to make decisions that may differ from the decisions of other committees. In other words, national consistency while desirable is not the 'Holy Grail'. As is stated above in the 'Guidelines' decisions are encouraged on a case-by-case basis.

[28] What is of vital importance in this application is the provision contained in the conditions of the licence that the duty manager must meet hourly with Police or the Liquor Licensing Inspector or when requested during the event, and must follow any directives of the Police officer in charge of the event or the Liquor Licensing Inspector in respect of controls regarding the sale and supply of alcohol. In our view this provision is the ultimate safety valve welcomed by the company in the spirit in which it has been formulated.

[29] It is for these reasons that we have decided to grant the application in its original form. The only issue for us was whether to reduce the serve size at 2.30pm to one bottle or four cans. That may be a matter for consideration at the next debriefing meeting. We thank the respective parties for their contribution to the issues raised at the hearing. Leave is granted to any party to seek clarification on any aspect of this decision or the conditions of the licence which are confirmed below:

1. Alcohol may be sold or supplied for consumption on the premises only on the following day and hours: Saturday 21 January 2017 (with contingency

- date of Sunday 22 January 2017) from 10.30am to 5.00pm (public bars) and from 11.00am to 5.30pm (Corporate bar).
2. Food, low alcohol beverages and a reasonable range of non-alcoholic refreshments must be available for consumption on the premises at all times.
 3. Free water must be freely available at all times.
 4. Steps must be taken by the licensee to provide assistance with or information about alternative forms of transport from the licensed premises.
 5. The licensee must display signage at every point of sale detailing restrictions on the sale and supply of alcohol to minors and intoxicated persons, and a copy of the licence attached to the premises so as to be easily read by persons attending the premises.
 6. A certificated manager must be on duty at all times at each bar facility within the licensed area, when the premises are open for the sale and supply of alcohol and their full names must be prominently displayed.
 7. All alcohol sold or supplied must be in a can, plastic vessel or a wine bottle of no greater capacity than 750ml.
 8. No patron may be served more than four beers/ciders and/or one 750ml bottle of wine from 10.30am in the public bars and 11.00am in the corporate bar. From 2.30pm all beer and cider cans are to be opened at the point of sale.
 9. From 4.30pm (5.00pm in the corporate bar) all wine will be sold by the glass with no more than two glasses per serve. The sale of wine may be combined with two beers/ciders.
 10. A duty manager must meet hourly with Police or the Liquor Licensing Inspector or when requested during the event and must follow any directives of the Police Officer in Charge of the event or the Liquor Licensing Inspector in respect of controls regarding the sale and supply of alcohol.
 11. The licensee may implement its own one-way door policy so that certain patrons who are allowed to return to the car park will not be re-admitted to the event.
 12. Non-alcoholic products must not be sold in glass containers.
 13. The applicant will abide the conditions of the alcohol management plan submitted with the application.
 14. The applicant will attend a formal debrief of how the event was managed with the reporting agencies within three months of the event taking place.

DATED at QUEENSTOWN this 9th day of December 2016



E W Unwin
Chairperson